

# Allen Matkins

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## VIA FEDERAL EXPRESS

February 25, 2015

Mr. Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1099 14th Street N.W.  
Washington, D.C. 20570-00001

Re: Laguna College of Art + Design  
Case No. 21-RC-128268  
Employer's *Reliant* Letter Regarding New Authority  
*Ozark Automotive Distributors, Inc. v. NLRB*

Dear Mr. Shinnars:

On behalf of our client, and pursuant to *Reliant Energy*, 339 NLRB 66 (2003), Laguna College of Art + Design ("LCAD") submits this letter in connection with its Exceptions to the Hearing Officer's Report on Objections, and Motion to Reopen the Record and Receive Further Evidence ("Exceptions and Motion to Reopen the Record"), filed on November 12, 2014.

This letter concerns *Ozark Automotive Distribs., Inc. v. NLRB*, \_\_\_ F.3d \_\_\_, 2015 U.S. App. LEXIS 2044 (D.C. Cir. Feb. 10, 2015), issued after LCAD filed its Brief in support of its Exceptions and Motion to Reopen the Record ("Supporting Brief").

*Ozark* dealt with whether, during a hearing on the validity of an election, the hearing officer committed prejudicial error in quashing subpoenas duces tecum. When ruling on the subpoenas, the "hearing officer did not conduct an *in camera* review of documents responsive to the subpoenas" even though *in camera* review is what the Guide for Hearing Officers suggests. *Ozark*, 2015 U.S. App. LEXIS 2044 at \*\*14-17. *Ozark* held that the hearing officer's decision to quash the subpoenas without reviewing the responsive documents constituted prejudicial error. *Id.* at \*\*23-26. *Ozark* noted that the hearing officer's decision prevented the employer from accessing and utilizing relevant documents – the requested documents "relate[d] to a matter in question" and "the documents may have provided leads to other relevant evidence." *Id.* at \*20.

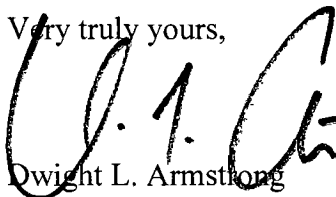
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The reason for LCAD's citation to *Ozark* is because it is directly analogous to a central issue in LCAD's matter before the Board, *i.e.*, whether the Hearing Officer's decision to quash a subpoena duces tecum constituted prejudicial error. This critical issue is discussed at length in LCAD's Supporting Brief at pages 9-17. In LCAD's matter, just as in *Ozark*, the Hearing Officer did not conduct an *in camera* review of the responsive documents. Moreover, the Hearing Officer's ruling prevented LCAD from accessing and utilizing relevant documents. *Ozark* directly supports LCAD's position (articulated at pages 13-17 of its Supporting Brief) that the Hearing Officer's ruling on the subpoena constituted prejudicial error.

Should the Board wish for supplemental briefing on *Ozark*, LCAD will certainly provide it.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. L. Armstrong", written over the typed name.

Dwight L. Armstrong  
for ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

DLA:kp

cc: Ms. Olivia Garcia (Regional Director, Region 21)  
Maria Keegan Myers, Esq. (Counsel for Union)

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**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321. On February 25, 2015, I served the within document on the interested parties in this action as stated below:

Mr. Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street N.W.  
Washington, D.C. 20570-00001

**Via Federal Express**

Ms. Olivia Garcia  
National Labor Relations Board, Region 21  
888 South Figueroa Street, 9<sup>th</sup> Floor  
Los Angeles, CA 90071-5449

**Via U.S. Mail**


Maria Keegan Myers, Esq.  
Rothner, Segall & Greenstone  
510 South Marengo Avenue  
Pasadena, CA 91101

**Via U.S. Mail**

- ☒ **BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.
- ☒ **BY MAIL:** I placed a true copy of the document in a sealed envelope or package addressed as indicated above on the above-mentioned date in Irvine, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 2015, at Irvine, California.

Karrle Preston  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature of Declarant)

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